

BEFORE THE STATE TAX APPEAL BOARD

OF THE STATE OF MONTANA

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ARTHUR R. VENDER,	)	
	)	DOCKET NO.: PT-1997-128
Appellant,	)	
	)	
-vs-	)	
	)	
THE DEPARTMENT OF REVENUE	)	FINDINGS OF FACT,
OF THE STATE OF MONTANA,	)	CONCLUSIONS OF LAW,
	)	ORDER and OPPORTUNITY
Respondent.	)	<u>FOR JUDICIAL REVIEW</u>

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The above-entitled appeal came on regularly for hearing on the 15th day of June, 1998, in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana, (the Board). The notice of the hearing was duly given as required by law. The taxpayer, represented by Arthur Vender, presented testimony in support of the appeal. The Department of Revenue (DOR), represented by Brandy Hilton, residential appraiser and Donald Blatt, appraiser, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, a schedule for posthearing submissions was established, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, finds and concludes as follows:

### FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing hereon, and of the time and place of said hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. The taxpayer is the owner of the property which is the subject of this appeal and which is described as follows:

Land, containing 2.25 acres and the  
improvements thereon, at Tract E Phillips  
Cabin Tracts, Lewis & Clark County, MT.  
Assessor number 11265

3. For the 1997 tax year, the DOR appraised the subject property at a value of \$16,850 for the land and \$14,350 for the improvements.

4. The taxpayer appealed to the Lewis & Clark County Tax Appeal Board requesting a reduction in value to \$4,250 for the land and \$7,550 for the improvements.

5. The County Board denied the appeal for the reason that "appellant failed to present adequate value evidence to verify values."

6. The taxpayer then appealed that decision to this Board.

7. The taxpayer requested value is the previous cycle appraised value.

8. Both parties responded with post hearing

submissions to the Board.

#### TAXPAYER'S CONTENTIONS

Mr. Vender argued on his appeal form that "The County Tax Appeal Board didn't take into consideration the information provided that the basis for the high value was on land 20 miles away while land about 5 miles away sells for \$2,000 per acre."

Taxpayer exhibit 1 is a listing of the land valuations for Phillips Cabin Tracts. Mr. Vender created the exhibit by extracting information from the DOR files in Helena.

He contended that the DOR appraisals on the property shows a range from \$4,511.86 per acre to \$14,861 per acre. He argued that this situation demonstrates that the valuation method used by the DOR has not produced equal values and that a complete reappraisal should be accomplished.

Mr. Vender studied the material used by the DOR to arrive at the values, including the sales prices as provided to him by the DOR after the local board hearing. He calculated that the sales prices ranged from \$1,993.72 per acre to \$9,166.67 per acre. His calculation was done by referring to the sales found on "NBHD 661 Lincoln Area", (a CALP model) utilized by the DOR. His analysis indicated that one sale was at \$15,000 per acre, but all of the others were \$2,000 to \$3,000 per acre when calculated out on a per acre basis. He could not determine how the DOR arrived at a land value for

Phillips Cabin Tracts, because the sales are not supportive of the value utilized in their appraisals. He did not make an adjustment for time in his consideration of the sales. Mr. Vender testified that land in this area has not increased 350% in 4 years, which is what the DOR figures represent.

He pointed out that the comparable properties presented by the DOR are located just outside of the town of Lincoln and just off the highway with, such things as cable television available. The subject property is 5 miles from a paved road, and does not have the amenities those properties closer to Lincoln have.

Mr. Vender described nearby land that was traded with the U.S. Forest Service for land in another location. He testified to a sale in 1993 by the U.S. Government, a public auction held by the Internal Revenue Service, where the highest price paid by anyone was \$1,250 per acre. He did not have sales verification, but did have discussions with real estate agents who currently have land listed for sale at \$2,000 to \$3,000 per acre in 20 acre plots.

The improvements consist of a one room cabin, a garage built from old boxcar lumber, and two wood sheds. The cabin has electricity, a wood stove for heat, a telephone, but there is no plumbing. It is not occupied on a regular basis, but is used as a recreational cabin.

Mr. Vender stated that he has never been able to find out how the DOR arrived at the values for the improvements. The questioned DOR value is an increase from 1996 to 1997.

#### DOR CONTENTIONS

The DOR presented copies of the Property Record Card, the Montana Cost Comparable sheet, 5 pages of CALP land value models, a map showing the location of the improved sales, and a map showing the entire Neighborhood 661.

Ms. Hilton testified that a property of .6 acres was advertised in a real estate magazine for \$20,000. (ex E) The property actually sold in April of 1996 for \$15,000. That calculates to \$25,000 per acre she stated, and was presented to indicate what the trend for property in the area is doing. She discussed two sales that occurred in September and June of 1992, for \$4,000 total. Those sales were used in the CALP (Computer Assisted Land Pricing) model for valuation and are slightly over 1 acre in size.

The DOR submitted the numerous CALP models to show that no matter where you are in the Lincoln area, west of Lincoln, or up Stemple Pass, or Lambkin subdivision, the one acre site is valued at \$14,600 by the DOR. What varies in each model is the base size and base rate. The model used for the subject property is \$5,344.81 per acre base rate for a 4 acre

base size. The DOR did not use the indicated figure however, they "rounded" the figure of \$5,344.81 down to \$5,000 which is entered by the appraiser into another computer that does the pricing. (Blatt testimony) The adjustment rate is also in actuality a rounded figure, and not the \$1,846.10 indicated on exhibit C.

The base rate was determined by the computer through a mathematical calculation according to Mr. Blatt. Mr. Blatt did not develop the CALP models used in pricing this property.

He stated that he has never physically inputted the data and developed a CALP model. It was Mr. Blatt's testimony that the model used in this pricing was developed by Mr. Terry Swope.

Mr. Swope determined the base rate and base sizes used in the models presented here.

#### BOARD'S DISCUSSION

The value of the subject property has been determined by the DOR using the market approach to value. A value based on the cost approach was also determined but not used by the DOR appraiser. The value of the subject improvements was determined by subtracting the CALP determined land value from the overall market approach value.

The Board analyzed the Montana Comparable Sales sheet (ex F), and followed the DOR procedure of ranking the 5 sales from lowest to highest in value, including the Multiple

Regression Analysis (MRA) estimate and the Weighted estimate of the subject to determine which numbers are actually valuing the subject property. The market value is being predicted by the MRA estimate, the Weighted estimate, and comparable sale number 2. Two of these figures are products of the computer analysis, and the third is a sale that was adjusted by over 50%. The actual sale price of comparable property number 2 in April of 1994 was \$18,750, but that was adjusted to \$31,339. The cost approach value for comparable number 2 is \$18,612, or within \$138 of what it actually sold for.

The actual sale price of comparable number 3 in November of 1995 was \$12,500. That is \$3,770 dollars less than the DOR cost value. Sale number 3 did not figure into the final determination of value since it was the lowest of the seven values in the calculation, even though it was also adjusted by over 50%.

The subject is shown as being in neighborhood 661B.

Comparable sale number 2 is the only comparable that is also indicated in neighborhood 661B. The other 4 sales are in neighborhoods 661, 661A and 661F. The Board understands from DOR exhibit C that Neighborhood 661 is the "Lincoln area"; Neighborhood 661-C in "Canyon Creek"; Neighborhood 661-E is "Lincoln Springs"; Neighborhood 661-F is "West Lincoln"; and Neighborhood 661-G is "Lambkins-Mulcare". These exhibits

present a confusing array of base size and base rate determinations to apparently recognize differences for the CALP values. Another exhibit however, the Montana Comparable Sheet, is used to indicate that sales from a rather small area, across a mountain divide from the subject and with superior amenities are from a comparable location. It seems as though there is a contradiction by arguing differences in the area for land sales, yet arguing the comparability for the overall market approach.

The taxpayer and the Board questioned the DOR appraisers concerning the pertinent data found in the CALP model utilized to determine subject land value. The DOR was given the opportunity to provide answers to the questions of; Who determined the base size applied in this model?; Who determined the base rate applied in this model? The DOR testified that Mr. Swope developed all the models for Lewis & Clark County, and the base rate and adjusted rate is "calculated using regression analysis".

It is difficult to understand how a base size of 4 acres is determined from the size of the tracts contained in the sales shown in model "NBHD 661 Lincoln Area", or why it contains sales of over 26 acres, over 37 acres and over 76 acres when it is supposed to be valuing smaller tracts. The picture is further clouded when one compares the base size and



base rate found in the model "661-C Canyon Creek" of 10 acres and \$2,147.76, with an adjustment rate of \$400. In that model area the DOR valued a one acre site at \$14,600, even though the calculation from the figures in the model would value one acre at \$16,400. The difference was explained as an DOR error in the application of the values. It is a confusing concept when the modeling area is presented as producing comparable sales for the market approach to value. This of course is supported by the DOR with the argument that the land value is inserted in the overall market valuation on a one for one basis from the CALP model. In the final determination of value here it creates an overvaluation of the improvements.

The taxpayer looked at the DOR values, attempted to divide them by the number of acres to arrive at a dollar value per acre. No question that what he attempted to do would not produce a close figure on a per acre basis. If the area, and the market are truly comparable, it seems strange that there would be a great variation. The bottom line is that even with all these land models the DOR is using the value of \$14,600 for a one acre parcel in the entire area anyhow!

The taxpayer presented no evidence of sales transactions to support his requested land value, and failed to meet his burden on appeal as to the land value.

It is the Opinion of this Board that the market

approach to value as presented for the subject property in this case is over stating the value of this property and should be overridden to the cost approach to value. The DOR was unable to provide support for the application of an Economic Condition Factor on this property that has been applied at 111%, and it is the Opinion of this Board that it shall be removed. The appeal of the taxpayer is granted in part and denied in part, and the decision of the Lewis & Clark County Tax Appeal Board is reversed.

#### CONCLUSIONS OF LAW

1. The Board has jurisdiction over this matter in accordance with 15-2-301, MCA.

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ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Lewis & Clark County by the assessor of that county at the 1997 tax year value of \$16,850 for the land and \$9,990 for the improvements as determined by this Board.

Dated this 24<sup>th</sup> day of July, 1998.

BY ORDER OF THE  
STATE TAX APPEAL BOARD

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PATRICK E. McKELVEY, Chairman

( S E A L )

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GREGORY A. THORNQUIST, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.